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September 24, 2020

United States Environmental Protection Agency
WIFIA Director
WJC-W 6201A
1200 Pennsylvania Avenue NW
Washington, DC 20460

Re: WIFIA Loan Agreement between the United States Environmental Protection Agency and the City of San Diego – Opinion Required from Counsel to Borrower

Ladies and Gentlemen:

I have acted as counsel to the City of San Diego (the “Borrower”), a California (the “State”) charter city established and existing pursuant to the Charter of the City of San Diego (the “City Charter”), in connection with the execution and delivery of (i) the WIFIA Loan Agreement, (ii) the WIFIA Note, (iii) the Collateral Agency Agreement and (iv) the MIPA Amendment, each as defined below.

I am providing this opinion letter (this “Opinion”) to you pursuant to Section 11(a)(iii) of the WIFIA Loan Agreement. Except as otherwise indicated, capitalized terms used and not defined in this Opinion and defined in the WIFIA Loan Agreement have the meanings given in the WIFIA Loan Agreement.

In my capacity as counsel to the Borrower, I have examined originals or copies of those records and documents I considered appropriate, including the following:

- (a) The WIFIA Loan Agreement, dated as of September 24, 2020 (the “WIFIA Loan Agreement”), entered into by and between the Borrower and the United States Environmental Protection Agency, an agency of the United States of America, acting by and through the Administrator of the Environmental Protection Agency (the “WIFIA Lender”);
- (b) The promissory note made by the Borrower to the WIFIA Lender, effective September 24, 2020 (the “WIFIA Note”), regarding the Water System Portion of Pure Water San Diego Program Phase I North City Project;

- (c) The Collateral Agency, Account and Assignment Agreement, dated as of November 14, 2018 (the "Collateral Agency Agreement"), by and among U.S. Bank National Association, a national banking association, as Collateral Agent (the "Collateral Agent"), the Borrower, the San Diego Facilities and Equipment Leasing Corporation (the "Corporation"), the Public Facilities Financing Authority of the City of San Diego (the "Authority"), U.S. Bank National Association, as successor trustee (the "Trustee") under the Indenture (defined below) and the WIFIA Lender;
- (d) The Indenture, dated as of January 1, 2009 (as supplemented and amended, the "Indenture"), by and between the Authority and the Trustee;
- (e) The Amended and Restated Master Installment Purchase Agreement, dated as of January 1, 2009 (as supplemented and amended to and including the date hereof, including by the MIPA Amendment (defined below), the "MIPA"), by and between the Borrower and the Corporation;
- (f) The First Amendment to the Amended and Restated Master Installment Purchase Agreement, dated as of November 14, 2018 (the "MIPA Amendment"), by and between the Borrower and the Corporation;
- (g) Ordinance Number O-20993 (New Series) of the City Council of the Borrower having a date of final passage of October 10, 2018 (the "WIFIA Ordinance") with respect to the WIFIA Loan Agreement, the WIFIA Note, the MIPA Amendment, the Collateral Agency Agreement and related matters;
- (h) Resolution Number FELC-2018-2 of the Board of Directors of the Corporation, adopted October 10, 2018, with respect to the MIPA Amendment, the Collateral Agency Agreement and related matters;
- (i) Resolution Number FA-2018-9 of the Board of Commissioners of the Authority, adopted September 25, 2018, with respect to the Collateral Agency Agreement and related matters; and
- (j) The contracts of the Borrower set forth in Part A of Schedule 13(n) to the WIFIA Loan Agreement (the "Existing Principal Project Contracts").

The MIPA, the MIPA Amendment, the Collateral Agency Agreement, each Authorizing Ordinance (including the WIFIA Ordinance), each Supplement and each Issuing Instrument (other than the WIFIA Loan Agreement) are collectively referred to herein as the "MIPA Documents." The WIFIA Loan Agreement, the WIFIA Note, the WIFIA Ordinance and the other MIPA Documents are collectively referred to herein as the "WIFIA Loan Documents." The MIPA Documents, the WIFIA Loan Documents and the Existing Principal Project Contracts are collectively referred to herein as the "Related Documents."

In addition to the documents listed above, I have made such other investigations of fact and law, reviewed such other documents, obtained such certificates from public officials and officers of the Borrower, and done such other things as I have determined necessary to render the legal opinions herein. As to relevant factual matters, I have relied upon, among other things, the Borrower's factual representations in its closing certificate. In addition, I have obtained and relied upon those certificates of public officials I considered appropriate.

I have assumed the genuineness of all signatures, the authenticity of all documents submitted to us as originals and the conformity with originals of all documents submitted to us as copies. To the extent the Borrower's obligations depend on the enforceability of the Related Documents against the other parties to the Related Documents (other than the Corporation and the Authority), I have assumed that the Related Documents are enforceable against such other parties.

On the basis of such examination, our reliance upon the assumptions in this Opinion and our consideration of those questions of law I considered relevant, and subject to the limitations and qualifications in this Opinion, I am of the opinion that:

1. The Borrower has been duly created and validly exists as a municipal corporation organized and existing under the City Charter duly adopted pursuant to the laws of the State (including the California Constitution, the general municipal election of April 7, 1931 and Chapter 47 of the Laws of 1931 approved by the California Legislature on April 15, 1931), with good right and power to issue the WIFIA Note.
2. The Borrower has all requisite right, power and authority to conduct its business and to execute and deliver, and to perform its obligations under the Related Documents to which it is a party.
3. The execution and delivery by the Borrower of, and the performance of its respective obligations under, the Related Documents to which it is a party, have been duly authorized by all necessary organizational or regulatory action.
4. The Borrower has duly executed and delivered each Related Document to which it is a party and each such Related Document constitutes the legal, valid and binding obligation of the Borrower, enforceable against the Borrower in accordance with its respective terms, subject to the qualifications and limitations hereinafter set forth.
5. No authorization, consent, or other approval of, or registration, declaration or other filing with any governmental authority of the United States of America or of the State is required on the part of the Borrower for the execution and delivery by such party of, and the performance of such party under, any Related Document to which it is a party other than authorizations, consents, approvals, registrations,

declarations and filings that have already been timely obtained or made by the Borrower.

6. The execution and delivery by the Borrower of, and compliance with the provisions of, the Related Documents to which it is a party in each case do not (i) violate the Organizational Documents of the Borrower, (ii) violate the law of the United States of America or of the State or (iii) to the best of my knowledge, after reasonable investigation, conflict with or constitute a breach of or default under any material agreement or other instrument to which the Borrower is a party, or any court order, consent decree, statute, rule, regulation or any other law to which the Borrower is subject or by which it is bound.
7. The Borrower is not an investment company required to register under the Investment Company Act of 1940, as amended.
8. Except as described in Schedule VII (*Litigation*) to the WIFIA Loan Agreement, to the best of our knowledge, after reasonable investigation, there are no actions, suits, proceedings or investigations against the Borrower by or before any court, arbitrator or any other Governmental Authority that are pending or threatened in connection with the Related Documents or the Project.

Our opinions above are subject to the following qualifications and limitations.

- (a) Our opinion in paragraph 4 above as to the enforceability of the Related Documents are subject to:
 - (i) limitations on enforceability under bankruptcy, insolvency, reorganization, moratorium or similar laws relating to or affecting creditors' rights generally (including, without limitation, fraudulent conveyance laws), under general principles of equity, including, without limitation, concepts of materiality, reasonableness, good faith and fair dealing and the possible unavailability of specific performance or injunctive relief, regardless of whether considered in a proceeding in equity or at law, and limitations under certain circumstances on the payment of judgments against local public entities under Article 1 of Chapter 2 of Part 5 of Division 3.6 of Title 1 of the California Government Code (§§ 970-971.2);
 - (ii) the unenforceability under certain circumstances of broadly or vaguely stated waivers or waivers of rights granted by law where the waivers are against public policy or prohibited by law;
 - (iii) public policy considerations, statutes or court decisions that may limit the rights of a party to obtain indemnification against its own negligence, misconduct or unlawful conduct;

- (iv) the unenforceability under certain circumstances of provisions imposing liquidated damages or other amounts which may be held by a court to be a penalty or forfeiture;
 - (v) the unenforceability under certain circumstances of choice of law or choice of venue provisions; and
 - (vi) the unenforceability under certain circumstances of waivers of jury trial.
- (b) I express no opinion as to any provision of the Related Documents requiring written amendments or waivers of the Related Documents insofar as it suggests that oral or other modifications, amendments or waivers could not be effectively agreed upon by the parties or that the doctrine of promissory estoppel might not apply.
- (c) I express no opinion as to the effect of non-compliance by you with any state or federal laws or regulations applicable to the transactions contemplated by the WIFIA Loan Documents because of the nature of your business.
- (d) A court may refuse to enforce a provision of the Related Documents if it deems that such provision is in violation of public policy. No opinion is being given as to the availability of any particular remedy.
- (e) For purposes of the matters set forth in paragraph 6, I have assumed that the Borrower will not in the future take any discretionary action (including a decision not to act) permitted by the Related Documents that would violate any California or San Diego constitutional provision, existing State law, charter, ordinance, regulation, decree, order or resolution, or conflict in any material respect with, or constitute a violation or breach of or default under any agreement, or other instrument to which the Borrower is subject to or by which it is bound, or require an approval, consent or authorization to be obtained from a California or San Diego governmental authority.

The law covered by this Opinion is limited to the law of the United States of America and the law of the State. I express no opinion as to the laws of any other jurisdiction and, unless otherwise specified, no opinion regarding the statutes, administrative decisions, rules, regulations or requirements of any county, municipality (other than the City of San Diego), subdivision or local authority of any jurisdiction.


The opinions expressed herein are matters of professional judgment and are not a guaranty or warranty of any result whatsoever.

This Opinion is furnished by us as counsel to the Borrower and may be relied upon by you only in connection with the transactions contemplated by the WIFIA Loan Documents. It may not be used or relied upon by you for any other purpose or by any other person, nor may copies be

delivered to any other person, without in each instance our prior written consent; provided that this Opinion may be included in any transcript of proceedings prepared in connection with the execution and delivery of the WIFIA Loan Documents. You may, however, deliver a copy of this Opinion to (i) your accountants, attorneys, and other professional advisors, (ii) pursuant to an order or legal process of any relevant governmental authority, (iii) to governmental regulatory agencies having jurisdiction over you, (iv) to third parties in connection with their requests submitted under the Freedom of Information Act (5 U.S.C. § 552), provided this Opinion is subject to disclosure thereunder unless determined to be exempt from disclosure in accordance with 5 U.S.C. § 552(b), (v) in connection with any legal action to which you are a party arising out of your participation in the Project and (vi) to your permitted assignees in connection with an assignment (or proposed assignment) of your rights under the WIFIA Loan Documents to such assignees, and such assignees may rely on this Opinion as if it were addressed and had been delivered to them on the date of this Opinion, unless statements in this Opinion would be affected by the status of such assignees. This Opinion is expressly limited to the matters set forth above, and I render no opinion, whether by implication or otherwise, as to any other matters. I assume no obligation to update or supplement this Opinion to reflect any facts or circumstances that arise after the date of this Opinion and come to our attention, or any future changes in laws, rules or regulations.

This Opinion is given in an official capacity only, and not personally, and no personal liability shall derive or result from this Opinion.

MARA W. ELLIOTT, CITY ATTORNEY

By 
Bret A. Bartolotta
Deputy City Attorney

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